

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2166 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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GULAM MOHOMMED RASULMIYA

Versus

GHANSHYAM FULCHAND KACHHIA  
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Appearance:

MR KC SHAH for Petitioners  
MR AJ PATEL for Respondent No. 1  
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/06/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendants - tenants, who were sued by the respondent - landlord for a decree of eviction on the ground of arrears of rent.

2. The trial Court on appreciation of the evidentiary material on record, came to the conclusion that the landlord had succeeded in establishing that the tenants in fact were in arrears of rent for more than six months, and had neglected to pay or deposit the same inspite of the notice of demand. However, though the trial Court passed a money decree in terms of the arrears due and payable, refused to pass a decree for eviction on the ground that the statutory notice was not legal inasmuch as the notice was issued by only one of the co-owners, and similarly the suit was also filed by one of the co-owners.

3. The landlord thereupon preferred an appeal before the lower appellate Court, which was allowed, by confirming the finding of fact that the tenants were in arrears of rent for more than six months and had neglected to pay or deposit the amount inspite of the statutory notice, and by reversing the finding recorded by the trial Court on the aspect of legality of the suit notice issued by only one co-owner and the filing of the suit by him.

4. Hence, the present revision at the instance of the original defendants - tenants.

5. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. The only question which requires to be considered in the present revision is in the context of the only issue substantially argued before the lower appellate

Court as to whether a notice issued by only one of the co-owners and a suit filed by only one of the co-owners, would be sufficient compliance of the requirement of the statutory notice within the meaning of section 12[2] of the Bombay Rent Act. In this context, it may be noted that the only reason put forward by the defendants - tenants against the legality of the suit notice is that it has been issued by only one of the number of co-owners.

7. This question is in my opinion no longer a matter of controversy in view of decision of this Court in the case of Amrutlal Saremal and others v/s Smt. Deviben Dullabhbbhai reported in 23[1] G.L.R. 208, relying upon two decisions of the Supreme Court namely, in the case of Sri Ram Pasricha v/s Jagan Nath & ors. [AIR 1976 SC 2335] and Smt. Kanta Goel v/s B.P. Pathak & ors. [AIR 1977 SC 1599]. The decision in the case of Amrutlal Saremal [supra] clearly lays down and follows the principle laid down by the Supreme Court in the two cited decisions to the effect that a co-owner is as much as owner of the entire property as any sole owner of the property is.

7.1 In para 18, this Court has observed and quoted the observations of Krishna Iyer J. as under :

"The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction, fails. We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner."

8. It is therefore obvious that once the two Courts below have arrived at a concurrent finding of fact that the defendants - tenants were in arrears of rent for more than six months, and once the position of law is no longer in controversy, it is found notice by one of the co-owners is a legal and valid notice, and so also the suit filed by one of the co-owners, there is no justification for interfering with the impugned judgement and decree passed by the lower appellate Court.

9. There is therefore no substance in the present revision and the same is accordingly dismissed. Rule discharged with no orders as to costs. Interim relief stands vacated.

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